

**Human Rights Commission  
Follow-up Report  
May 2003**

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STATE OF TENNESSEE  
**COMPTROLLER OF THE TREASURY**

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John G. Morgan  
Comptroller

May 9, 2003

The Honorable John S. Wilder  
Speaker of the Senate  
The Honorable Jimmy Naifeh  
Speaker of the House of Representatives  
The Honorable Thelma M. Harper, Chair  
Senate Committee on Government Operations  
The Honorable Mike Kernell, Chair  
House Committee on Government Operations  
and  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Human Rights Commission. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the commission should be continued, restructured, or terminated.

Sincerely,

John G. Morgan  
Comptroller of the Treasury

JGM/dw  
03-065

State of Tennessee

# Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit  
**Human Rights Commission**  
Follow-up Report  
May 2003

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## AUDIT OBJECTIVES

The objectives of the audit were to determine the commission's progress in correcting the problems identified in the March 2002 performance audit of the commission and to develop possible alternatives for legislative and administrative actions that could result in more efficient and effective operations of the commission.

## FINDINGS

**The Commission Continues to Have Problems Initiating Complaint Investigation and Closing Employment Complaints in a Timely Manner\***

The commission's failure to resolve employment discrimination charges in a timely manner diminishes the effectiveness of the commission, discourages those discriminated against from filing complaints with the commission, prevents complainants from obtaining remedies for their situations, and permits continued discriminatory practices. Although the percentage of cases over 270 days old has decreased from 68% in September 1998 and 51% in January 2002, the commission still has problems closing cases in a timely manner. As of

March 11, 2003, 26% of the 383 open cases were at least 270 days old (page 9).

**While the Commission Has Improved Its Resolution of Housing Cases, There Are Still Problems With Timely Processing of Housing Complaints\***

The completion of housing cases by the commission continues to be a concern. In February 2002, there were 80 housing cases under investigation that had been open an average of 373 days. On March 10, 2003, there were 44 cases under investigation that had been open an average of 250 days (page 11).

**Contract Investigators for the  
Commission Do Not Hold Licenses  
Required by State Law\***

The commission's contract investigators are required by state law to be licensed in Tennessee as private investigators or attorneys. Two of five contract investigators do not hold Tennessee licenses (page 13).

**Some Commissioners and Staff Are Not  
Signing and Dating an Annual Conflict-  
of-Interest Statement\***

Conflict-of-interest statements for both employees and commissioners are either

missing, undated, unattributable, or not up-to-date (page 14).

**The Commission Has Not Followed State  
Policies Regarding the Employment and  
Workday of Some Personnel**

Interim employees have worked for the commission beyond the one-year limit, and a part-time employee is working an excessive number of hours, sometimes working at home (page 15).

\* Related issues were also discussed in the 1995, 1999, and 2002 performance audits of the commission.

## **OBSERVATION AND COMMENT**

The audit also discusses the issue of commission meeting attendance (page 8).

## **ISSUES FOR LEGISLATIVE CONSIDERATION**

The General Assembly may wish to consider amending Section 4-21-302 through 311, *Tennessee Code Annotated*, to require the commission to close employment and housing complaints within a specified number of days, depending on whether the case resulted in a "cause" or "no cause" finding, was being mediated, or was going before an administrative law judge (page 19).

The General Assembly may wish to consider amending *Tennessee Code Annotated* to require the removal of any commission member who regularly fails to attend commission meetings (page 19).

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"Audit Highlights" is a summary of the audit report. To obtain the complete audit report, which contains all findings, recommendations, and management comments, please contact

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# **Performance Audit Human Rights Commission Follow-up Report**

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# **Performance Audit Human Rights Commission Follow-up Report**

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## **INTRODUCTION**

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### **PURPOSE AND AUTHORITY FOR THE AUDIT**

This performance audit of the Human Rights Commission was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-224, the Human Rights Commission is scheduled to terminate June 30, 2003. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the Human Rights Commission should be continued, restructured, or terminated.

### **OBJECTIVES OF THE AUDIT**

The objectives of the audit were

1. to determine the commission's progress in correcting the problems identified in the March 2002 performance audit of the commission and
2. to develop possible alternatives for legislative and administrative actions that could result in more efficient and/or effective operation of the commission.

### **SCOPE AND METHODOLOGY OF THE AUDIT**

The Human Rights Commission's activities were reviewed for the period January 2002 through March 2003. The audit was conducted in accordance with government auditing standards generally accepted in the United States of America and included

1. a review of applicable statutes and rules and regulations;
2. an examination of commission files, documents, policies, and procedures;
3. a review of the work-sharing agreement with the federal Equal Employment Opportunity Commission and the cooperative agreement with the U.S. Department of Housing and Urban Development;



4. a review of prior performance audits; and
5. interviews with commission staff and personnel of the federal Equal Employment Opportunity Commission and U.S. Department of Housing and Urban Development.

## **STATUTORY RESPONSIBILITIES**

Section 4-21-202, *Tennessee Code Annotated*, provides for the Human Rights Commission to promote the creation of local human rights commissions and enter into working cooperative agreements with them; receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints alleging civil rights violations; furnish technical assistance on request to help organizations further their compliance; and cooperate with the federal Equal Employment Opportunity Commission in its enforcement of the Civil Rights Act of 1964 and with the U.S. Department of Housing and Urban Development in its enforcement of the Fair Housing Act of 1968. Under *Tennessee Code Annotated*, Section 4-21-905, a person alleging discrimination under Title VI of the Civil Rights Act of 1964 may file a complaint with the state agency receiving the federal funds or with the commission.

## **COMMISSION COMPOSITION AND STAFF**

The commission has 15 members appointed by the Governor, five from each grand division of the state. The members are to be appointed on a nonpartisan basis and be broadly representative of employees, proprietors, trade unions, religious groups, human rights groups, and the general public. Commissioners are appointed for six-year terms and may be reappointed.

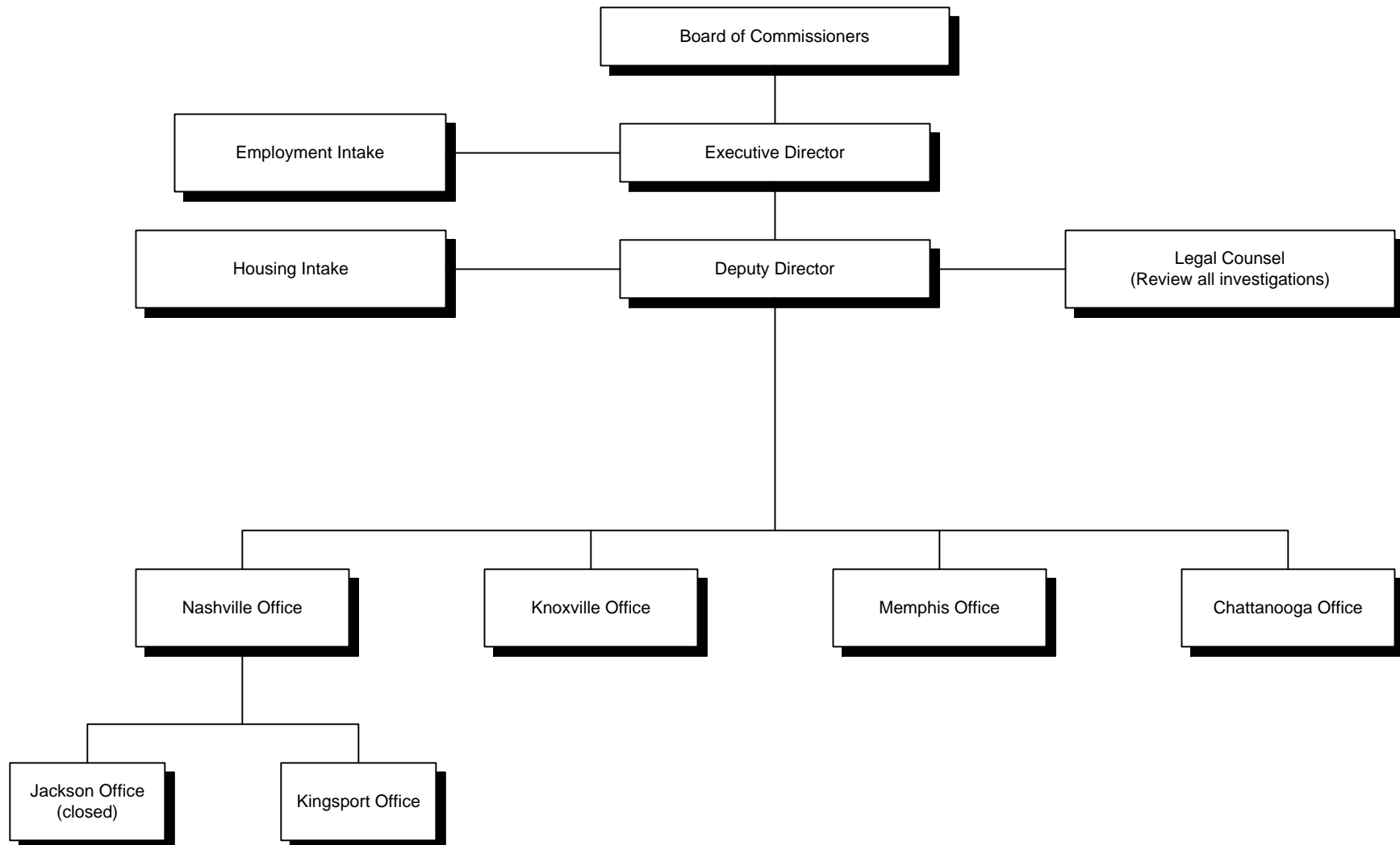
Section 4-21-202(3) gives the commission the authority to appoint an executive director annually and set his compensation, as well as to maintain offices in Shelby, Davidson, Knox, and Hamilton counties and other offices as necessary. The current executive director was initially appointed in November 1997.

The central office is in Nashville with regional offices in Memphis, Jackson, Chattanooga, Knoxville, and Kingsport. (The Jackson office closed in March 2003.) As of March 12, 2003, the commission had 15 regular employees investigating cases and 5 contract investigators. An organization chart of the Human Rights Commission is on the following page. Some investigators handle both employment and housing cases, while others are only assigned to employment cases. Federal Funds (Title VI) complaints filed with the commission have been investigated by the state agency against which the complaint was filed.

The Title VI/Federal Funds activities of the commission were reviewed in a January 2001 report by the Division of State Audit. The commission has provided information regarding its current compliance with Title VI of the Civil Rights Act of 1964, and this information can be found in the Appendix.

# Human Rights Commission

## March 2003



## **REVENUES AND EXPENDITURES**

The commission had total expenditures of \$1,860,000 for the year ended June 30, 2002. The budget for the fiscal year ending June 30, 2003, is \$1,860,000. In that budget, \$1,426,100 (77%) will be funded from state appropriations, and \$433,900 (23%) will be federal revenue under agreements with the Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development.

## **INTERACTION WITH FEDERAL AGENCIES**

The staff investigate charges of discrimination under federal jurisdiction through contracts with the federal Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. Federal jurisdiction complaints are dual-filed—one copy of the complaint is sent to the state and another is sent to the relevant federal agency.

### Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC) is responsible, under federal law, for enforcing laws against employment discrimination when the employer has 15 or more employees. Under state statute, an employer must have eight or more employees before charges of discrimination can be made. Any complaint against an employer with between 8 and 15 employees falls under state (and commission) jurisdiction only. Pursuant to a work-sharing agreement renewed annually, employment-related complaints in Tennessee against employers with 15 or more employees are filed with both the commission and the EEOC. The EEOC pays the commission \$500 for each complaint resolved and provides additional funds annually for travel expenses. The EEOC provides guidelines for resolving and investigating complaints. Cases are reviewed by the EEOC after submission for credit against the work-sharing agreement.

### U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (HUD) is responsible for enforcing federal fair housing laws. Under a cooperative agreement, HUD pays the commission \$1,800 for each housing discrimination complaint investigated and closed and additional amounts for training and administrative costs. HUD also provides guidelines for resolving complaints and reviews cases submitted by the commission for compliance with the guidelines.

## **COMPLAINT-HANDLING PROCESS**

Sections 4-21-302 through 311, *Tennessee Code Annotated*, describe the process for filing and handling charges of discrimination. Persons who believe they have been discriminated against may charge discrimination, or a commission member may bring charges on behalf of someone. The charge is a written, sworn complaint stating a discriminatory practice has occurred. A description of the alleged discriminatory act and facts sufficient to enable

commission staff to identify the person or persons charged (respondent) are included. Statute requires a complaint to be filed within 180 days of the alleged discriminatory act and requires the commission to furnish the respondent a copy of the complaint within 10 days.

In Memphis and Nashville, where the EEOC has offices, complainants often file their employment discrimination complaints with the EEOC instead of the commission. Because the EEOC does not have an office in East Tennessee, the number of complaints filed with the commission in East Tennessee is higher. The work-sharing agreement allows the commission to process all complaints filed in East Tennessee.

A central intake unit was opened in January 1998 in the Nashville office to handle the intake process for the commission. The intake unit is responsible for taking the initial complaint, notifying respondents, receiving position statements from respondents, and transmitting complainant and respondent rebuttals to the opposing party. Once these steps are completed, the deputy director assigns the case to an investigator. The executive and deputy director set caseloads and closure goals and communicate this information to staff through meetings, memoranda, and individual contact with investigators.

The investigators are responsible for obtaining the necessary information to make a determination. They review the complaint and the position statement from the respondent and interview the complainant, the respondent, and any witnesses. Then the investigator determines whether discrimination has occurred and what action to take. Employment and housing cases can be closed using the following types of closures:

- Administrative Closure—case closed by the commission for complainant's failure to cooperate, withdrawal of the charges by the complainant, lack of jurisdiction, or inability to locate the complainant.
- Settlement Agreement—agreement between the complainant and the respondent reached prior to the commission's investigation of the case or determination of cause.
- No-Cause Finding—the commission has determined after investigation that there is no reasonable cause to believe the respondent has engaged in a discriminatory practice.
- Conciliated Settlement—agreement between the complainant and the respondent after the commission has completed an investigation and reached a cause finding.
- Hearing—if a conciliated settlement cannot be reached, a hearing is scheduled before the commissioners. They can dismiss the complaint or issue a cease and desist order to the respondent. Either party can appeal the decision to Chancery Court if dissatisfied.

The following charts provide information on EEOC and HUD complaints received and resolved by the commission.

### EEOC Complaints

	<u>1998-1999</u>	<u>1999-2000</u>	<u>2000-2001</u>	<u>2001-2002</u>
HRC Only	45	44	43	47
Dual-Filed	<u>698</u>	<u>579</u>	<u>506</u>	<u>486</u>
Total	743	623	549	533

### EEOC Resolution Summaries

	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-2001</u>	<u>2001-2002</u>
Settlements	28	28	26	37
Withdrawal w/Benefits	14	15	8	15
Unsuccessful Conciliation	0	0	0	0
No Cause	492	531	614	618
Administrative Closure	<u>142</u>	<u>161</u>	<u>104</u>	<u>118</u>
Total	676	735	752	788

### Total Monetary Resolutions for EEOC Complaints

FY1998-1999	\$577,030
FY1999-2000	\$295,184
FY2000-2001	\$379,568
FY2001-2002	\$374,916

### HUD Complaints

	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-2001</u>	<u>2001-2002</u>
HRC Only	51	17	0	0
Dual-Filed	<u>125</u>	<u>144</u>	<u>105</u>	<u>65</u>
Total	176	161	105	65

### HUD Resolution Summary

	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-2001</u>	<u>2001-2002</u>
Cause	5	3	6	1
No Cause	86	57	89	74
Non-Jurisdictional	1	41	8	2
Withdrawals	3	2	4	2
Mutual Agreements	3	7	12	20
Administrative Closures	<u>7</u>	<u>2</u>	<u>7</u>	<u>4</u>
Total	105	112	126	103

### Total Monetary Awards for HUD Complaints

FY1998-1999	\$500
FY1999-2000	\$ 0
FY2000-2001	\$ 0
FY2001-2002	\$ 0

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## OBSERVATION AND COMMENT

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The topic discussed below did not warrant a finding but is included in this report because of its effect on the operations of the Human Rights Commission and on the citizens of Tennessee.

### COMMISSION MEETING ATTENDANCE

In accordance with Section 4-21-201, *Tennessee Code Annotated*, the commission has 15 members (appointed by the Governor) from various backgrounds and interests including religious groups, human rights groups, and the general public. In the March 2002 performance audit, we reported that three commissioners missed at least 78% of meetings between January 1999 and December 2001; six commissioners missed half or more. We reviewed minutes of commission meetings from January through November 2002 (the latest available). The commissioners met seven times during that period. Seven of 16 commissioners serving on the commission's board between January and November 2002 missed at least half of the board meetings they were eligible to attend. State statute does not provide for removal of a commissioner for any reason. The commission's bylaws permit the chair to request the resignation of any commissioner who misses three consecutive meetings. However, according to board minutes, no member has been asked to resign. The General Assembly may wish to consider amending *Tennessee Code Annotated* to require the removal of any commission member who regularly fails to attend commission meetings.

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## FINDINGS AND RECOMMENDATIONS

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### 1. The commission continues to have problems initiating complaint investigation and closing employment complaints in a timely manner

#### Finding

The commission's open caseload has decreased significantly over the last five years. However, even though the commission has reduced the number of cases open nine months or more and the average time to close a case has declined, the commission still needs to improve in regards to the time it takes to assign investigators, notify respondents, and close cases. The lengthy processing time diminishes the effectiveness of the commission, discourages those discriminated against from filing complaints with the commission, prevents complainants from obtaining remedies for their situations, and permits continued discriminatory practices. Management concurred with this assessment in the March 2002 performance audit.

Since his appointment in November 1997, the executive director has taken steps to reduce the number of open cases. The commission has used contract investigators since 1998 to supplement commission staff.

*Tennessee Code Annotated*, Section 4-21-302, requires all complaints to be filed by the aggrieved employee or a member of the commission within 180 days of the discriminatory action, the respondent to be notified within 10 days of the filing of a complaint, and the investigation to commence within 30 days of the complaint's file date. Statute does not specify the number of days in which a case is to be completed. EEOC's guideline for the completion of a case is 270 days.

In recent years, the number of cases closed by the commission has increased every year. However, the number of cases received by the commission has also significantly dropped; in 2002, the commission received over 200 fewer complaints than the commission received in fiscal year 1999. During fiscal years 1999 through 2002, the commission received and closed the following number of employment discrimination cases.

<u>Complaints</u>	<u>Fiscal Year 1999</u>	<u>Fiscal Year 2000</u>	<u>Fiscal Year 2001</u>	<u>Fiscal Year 2002</u>
Received	743	623	549	533
Closed	676	735	752	788

For fiscal year 2002, the EEOC contracted with the commission for 692 cases. The commission was credited with 692 of 709 closed employment cases submitted to the EEOC.



Since September 1998, the number and age of open employment discrimination cases has fallen.

	<u>Open Cases</u>	<u>% over 270 days old</u>
September 1998	1,090	68%
January 2002	660	51%
March 11, 2003	383	26%

For the 383 open cases as of March 11, 2003, the average time between the complaint filing date and assignment to an investigator is 304 days, down from 585 days in January 2002. In 109 of the 383 cases, it took 100 or more days for the case to be assigned to an investigator. In 61 of the 109 cases, it took over 200 days to be assigned to an investigator. Of this 109, 8 had not yet been assigned.

We requested the files of the 57 cases closed in January 2003, according to the commission/EEOC's computer system, to review processing times. The commission was not able to find three cases, though it is supposed to keep copies of all cases submitted to the EEOC. The staff had to ask the EEOC to provide them a copy. Nine of the cases were actually closed in December 2002 according to their determination letters. All of the cases had an office date between December 1999 and November 2002, except for one that was filed in October 1997.

Of the 48 files reviewed with a determination letter dated in January 2003, 3 cases had no copy of the notification letter sent to the respondent. With regard to these 48 files, in two cases, there was no copy of the respondent's position statement. Where dates were available, the average number of days for the commission to notify respondents after the complaint was filed was 39 days, the same as in June 2001. Respondents took an average of 50 days, up from 47 days in June 2001, to provide position statements after the commission had sent them a notification letter. The entire process took an average of 501 days from complaint filing date to determination, down from 679 days in June 2001. Twenty cases (42%) took over 500 days to close, up from 14 cases (38%) in June 2001. Forty-three of the 48 cases were "no cause," and 5 were administratively closed. The long delays (according to case files) before a staff person or investigator begins to work with the case suggest these cases could have been closed sooner.

### **Recommendation**

Management should continue its efforts to reduce the number of open cases and to better monitor the progress of cases. The commission should continue to find methods to reduce the amount of time to investigate a case, such as quicker assignment to an investigator and time completion goals for all phases of case processing.

The General Assembly may wish to consider amending Section 4-21-302 through 311, *Tennessee Code Annotated*, to require the commission to close employment complaints within a specified number of days, depending on whether the case resulted in a "cause" or "no cause" finding, was being mediated, or was going before an administrative law judge.

## **Management's Comment**

We do not concur. This is essentially the same finding from the March 2002 Performance audit. If one looks at the progress made by the agency in its reduction of cases over the past six years, it's unfathomable that they could conclude that the agency "continues" to have problems processing complaints in a timely manner. Since the last performance audit was conducted roughly twelve months ago, the agency has substantially reduced its employment inventory since that time. At this time last year the inventory consisted of 676 open charges and over the past year 581 new charges have been filed. Despite the influx of new cases the agency has reduced the inventory to 392 charges in employment with an average case age of 200 days. Clearly, the agency does not claim to process complaints with perfection, however, to suggest with repeated findings that it is having problems in an area where there has been dramatic improvement presents the agency in a false light.

## **Division of State Audit Rebuttal to Management's Comment**

Although there has been improvement in this area, the basic conditions of noncompliance found in the previous audit remain. We have acknowledged that the number of open cases has decreased over the last five years, at the same time the number of complaints received has significantly fallen and the commission has had the aid of several contract investigators. However, as previously stated, the average time taken to process cases—assigning the case to an investigator (304 days), notifying respondents of a complaint against them (39 days), receiving a position statement from the respondent (50 days)—and ultimately to close them (501 days) does not comply with statutory time requirements and continues to be unreasonably long.

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## **2. While the commission has improved its resolution of housing cases, there are still problems with timely processing of housing complaints**

### **Finding**

*Tennessee Code Annotated*, Section 4-21-302, requires all complaints to be filed by the aggrieved employee or a member of the commission within 180 days of the discriminatory action, the respondent to be notified within 10 days of the filing of a complaint, and the investigation to commence within 30 days of the complaint's file date. Statute does not specify the number of days in which a case is to be completed. HUD's guideline for completion of a case is 100 days.

While the commission's case closure rate satisfies the Cooperative Agreement with the U.S. Department of Housing and Urban Development (HUD) and case processing times have significantly improved, a file review of the eight cases closed in January 2003 reveals that it took the commission an average of 256 days from the commission's receipt of the complaint to a determination, down from 397 days for June 2001. Three cases lacked a dated letter of determination. The time between the commission's receipt of a complaint and complete case

closure averaged 251 days for all eight cases. It took the commission an average of 38 days to send a notification letter to the respondent named in a housing complaint after the complaint had been received by the commission, down from 78 days in June 2001. Management concurred in the March 2002 performance audit that there were problems processing housing cases in a timely manner.

During fiscal years 1999 through 2002, the commission received and closed the following number of housing discrimination cases.

<u>Complaints</u>	<u>Fiscal Year 1999</u>	<u>Fiscal Year 2000</u>	<u>Fiscal Year 2001</u>	<u>Fiscal Year 2002</u>
Received	176	161	105	65
Closed	105	112	126	103

As of March 10, 2003, there were 44 open housing cases currently under investigation. These cases have been open an average of 250 days. This is down from 80 housing cases open an average of 373 days in February 2002.

### **Recommendation**

Management should develop processing time guidelines for each phase of housing complaint casework.

The General Assembly may wish to consider amending Section 4-21-302 through 311, *Tennessee Code Annotated*, to require the commission to close housing complaints within a specified number of days, depending on whether the case resulted in a “cause” or “no cause” finding, was being mediated, or was going before an administrative law judge.

### **Management’s Comment**

We concur in part. The agency has made significant improvements in its processing of housing complaints since the last audit was performed last year. As previously noted the number of charges have been reduced from 80 to 44 open complaints with a reduction of average case age from 373 days to 250 days respectively. This average case age meets the standard set by the commission to not have any charges in excess of 270 days. We recognize that there are still areas where we can improve our processing times. The audit fails to recognize those areas where extended processing times are beyond the control of the agency.

### **3. Contract investigators for the commission do not hold licenses required by state law**

#### **Finding**

Section 62-26-204, *Tennessee Code Annotated*, requires persons conducting investigatory activities to be licensed as private investigators in Tennessee. Section 62-26-223, *Tennessee Code Annotated*, provides that an attorney-at-law is exempt from the private investigator licensure requirement. In Tennessee, private investigators are regulated by the Department of Commerce and Insurance's Private Investigation and Polygraph Commission. The March 2002 performance audit reported that the commission's contract investigators were not licensed to conduct investigations for the commission. The Department of Commerce and Insurance's General Counsel stated in December 2000 that the commission's contract investigators must apply to obtain a private investigator's license or be an attorney licensed in Tennessee in order to comply with this statute. Otherwise, all work being performed by these individuals must cease by the end of June 30, 2001. Following notification by auditors, the commission stated it replaced all contract investigators with licensed attorneys. Management stated in the March 2002 performance audit that all agency contractors had been brought into compliance. In April 2003, the Department of Commerce and Insurance reiterated its position, stating that "attorney-at-law means an attorney licensed to practice in the State of Tennessee so that Tennessee's Board of Professional Responsibility that governs the conduct of attorneys licensed in this state, can regulate the attorneys for any unethical or illegal conduct."

A review of the commission's contract investigators' licensure as of March 12, 2003, revealed that two contractors operating under active contracts in fiscal years 2002 and 2003 did not hold the Tennessee licenses required. One was a licensed attorney in another state, and one had been licensed in another state but has been ineligible to practice since September 4, 2002. The contracts granted by the commission did not state the contractor must hold a Tennessee license.

#### **Recommendation**

Management should require that these two contract investigators obtain a Tennessee license as either an attorney or private investigator or terminate their contracts effective immediately. Future contracts should state that the contract investigator must be a licensed private investigator or attorney in Tennessee.

#### **Management's Comment**

We do not concur. There is no language in the Private Investigator's Act that requires an individual to be a licensed Tennessee attorney in order to qualify for the attorney-at-law exemption. There are also no rules or regulations enacted that we are aware of that sets this as a requirement. The agency has simply been told that the Department of Commerce and Insurance

has this requirement, however, we have not been provided with documentation that illustrates this requirement.

### **Division of State Audit Rebuttal to Management's Comment**

As stated in the finding, in December 2000, the Division of State Audit and the Department of Commerce and Insurance first informed the commission that the commission's contract investigators must hold a Tennessee license as either a private investigator or an attorney-at-law. Licensure ensures that the individual is competent in the field, continues his or her professional education, and is subject to the ethical restraints of the profession and the regulation of the licensing entity in Tennessee. Therefore, contract investigators need to be subject to ethical and professional oversight by either the Board of Professional Responsibility or the Private Investigation and Polygraph Commission.

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#### **4. Some commissioners and staff are not signing and dating an annual conflict-of-interest statement**

##### **Finding**

The March 2002 performance audit reported that the commission did not have a formal conflict-of-interest policy and annual disclosure for commissioners and recommended the establishment of a policy that should be annually signed and updated. Management concurred, and the commission approved a conflict-of-interest policy for the commissioners in April 2002.

A review of the conflict-of-interest statements on file for both employees and commissioners of the Human Rights Commission reveals that many are missing, undated, unattributable (no printed name on document or below signature), or not up-to-date.

Of the 30 employees of the commission, 9 conflict-of-interest statements were missing. However, 6 of these may be accounted for because, of the 27 provided to the auditor by the commission, 6 had signatures that were unattributable. One had a printed name but no signature. Staff statements have not been updated annually. Thirteen of the 27 provided were undated, 4 were dated in March 2003, and 10 were dated in May 2001. The executive director and deputy director signed conflict-of-interest statements in May 2001.

Of the 15 commissioners, only 13 had signed conflict-of-interest statements, and none were dated or had printed names on the document. The chair of the board of commissioners has signed a conflict-of-interest statement.

Without annual, dated conflict-of-interest statements, signed and with a printed name in the document or under the signature, the commission cannot ensure the state and the public that staff and commissioners have accepted the responsibility of disclosing interests that may be a conflict of interest or have the appearance of such.

## **Recommendation**

The commission should require annual, dated conflict-of-interest statements, signed and with a printed name in the document or under the signature, from both staff and commissioners.

## **Management's Comment**

We concur. There is a formal conflict of interest policy for both staff and the members of the commission. It has been understood by all parties that if a conflict arises it should be made known to management and the individual involved should recuse themselves from participation in that particular matter. In the future both staff and members of the commission will sign annual statements.

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### **5. The commission has not followed state policies regarding the employment and workday of some personnel**

#### **Finding**

The commission has five employees hired as interim appointments that have exceeded the one-year limit. A sixth employee hired February 1, 2002, resigned in late February 2003. The employees include two of the commission's legal staff (hired December 13, 2000, and September 24, 2001), a clerk (hired January 28, 2002), the housing intake coordinator/Spanish interpreter (hired July 30, 2001), and the budget coordinator (hired June 1, 2002). Department of Personnel Rule 1120-2-.10(4) states, "An interim appointment is an appointment to a full-time career service position for a period of service not to exceed one (1) year." The Department of Personnel sends agencies a monthly report identifying employees on interim appointments so that the agencies can monitor the one-year period.

According to the above rule, the commission must either terminate the employees, request new interim appointments, or grant regular appointments in the positions using the certificate of eligibles (the register) from which the interim appointments were made, provided:

- (a) the employees were within the original top five (5) eligibles on an employment certificate or the original top three (3) eligibles on a promotional certificate and
- (b) the rules for contacting eligibles were followed and eligible applicants on the register at the time of the interim appointments were notified that the interim appointments could change to regular appointments at a later time.

A part-time employee is working more than the 1,600 hours per year allowed by Department of Personnel rules. In the last six months of fiscal year 2000, the employee worked 438.7 hours; for the entire fiscal year 2001, 1,572.5 hours; for fiscal year 2002, 2,020.5 hours.

So far in fiscal year 2003, the employee has worked 1,785.4 hours; if the trend of at least 200 hours a month continues, total hours for fiscal year 2003 will exceed 2,500 hours. Full-time employees are scheduled to work 1,950 hours a year. Many times the employee worked 10 or more hours a day, often with no lunch break, which is also against state regulations. The employee performs clerical tasks such as preparing new files and shredding old ones, copying documents, and answering the phone. The executive director states that it takes that many hours to accomplish the employee's responsibilities.

The employee's current pay is \$13.63 per hour. Comparatively, among clerical staff, a full-time secretary makes \$1,736 a month, or the hourly equivalent of \$11.57/hour; a full-time clerk, \$1,717 a month, or \$11.45/hour. State employees are eligible for medical insurance if they work more than 1,450 hours a year. They are eligible for leave and longevity if they work more than 1,600 hours a year. The employee is enrolled in a state medical insurance program, though the employee is not accruing annual and sick leave or participating in the state retirement system. According to the Department of Personnel, employees must be given the benefits of annual and sick leave and longevity; an employee cannot reject these benefits. The Department of Personnel states the agency must inform it when a part-time employee works enough hours to accrue leave and longevity.

Other irregularities were shown on the time cards and attendance and leave authorization forms of the part-time employee:

- Many entries on time cards were handwritten and not initialed by a supervisor, with one exception. (Following the June 1999 performance audit, management instituted a time clock which employees punch when they arrive at and leave from work.)
- There were inconsistencies on the employee's time card and attendance and leave form and between the verbal explanations for these inconsistencies from management and the employee. On August 23, 26, and 27, 2002, there are handwritten entries on the employee's time card indicating eight hours of work along with the word "furlough." The attendance and leave authorization forms submitted by the employee indicate eight hours of work each day along with the words "furlough" and "surgery" on August 23 and "furlough" and "out surgery" on August 26 and 27. The employee would only state she had surgery in August during the time she had taken off. The only days in August the employee did not claim to have worked were the weekends of August 3-4, 17-18, and 24-25, and Wednesday-Friday, August 28-30, for which she wrote "off" on the attendance and leave authorization form. To the best knowledge of the personnel coordinator, the employee had surgery on August 23. The executive director confirmed that the employee had surgery on August 23 and was in the hospital through August 26. According to one conversation with the employee, the employee was told by the executive director to write "furlough" because she could not complete her work. In a subsequent conversation, the employee stated that she was working at home preparing materials for a mailing. The time card's handwritten entries for these days had no supervisor's initials. The attendance and leave authorization form for that pay period was signed by the personnel coordinator and executive director. The executive

director stated that the incorrect entries were mistakes, the result of a misunderstanding, and that the employee worked at home on August 28 through August 30. The employee's attendance and leave form and the amount of the employee's payroll check for that two-week pay period both indicate the employee was paid for the hours reported for that pay period.

- During an eight-day period in September 2002, the employee worked at home for five days for 14.4 hours a day. According to the employee, the work involved clerical tasks such as mailing out information. The employee's attendance and leave authorization form for that pay period was signed for the employee by the personnel coordinator and approved by the executive director.
- The employee worked eight hours a day on the holidays of December 24-26, 2002. The attendance and leave authorization form for that pay period was signed by the personnel coordinator and deputy director.

### **Recommendation**

Management must either terminate the interim employees who have exceeded the one-year limit, request new interim appointments, or grant regular appointments in the positions using the certificate of eligibles (the register) from which the interim appointments were made, provided:

- (a) the employees were within the original top five (5) eligibles on an employment certificate or the original top three (3) eligibles on a promotional certificate and
- (b) the rules for contacting eligibles were followed and eligible applicants on the register at the time of the interim appointments were notified that the interim appointments could change to regular appointments at a later time.

Management needs to seek guidance from the Department of Personnel to accurately classify the employee as part-time or full-time based on the hours worked during a year. Depending on the classification as determined by the Department of Personnel, the employee should accrue appropriate overtime and benefits.

Management also needs to establish policies regarding who supervises whom, the number of hours that can be worked each day, excessive working hours, working at home, appropriate "work at home" duties, supervision of "work at home," and the initialing of handwritten time card entries by a supervisor. Employees should only be allowed to work at home under unusual circumstances. If unusual circumstances occur and an employee is allowed to work at home, this arrangement should be of short duration, with adequate documentation of the work to be completed and actually completed, and approved by the executive director. Any overtime hours worked should be performed in the office.



### **Management's Comment**

We concur. The aforementioned violations were simple oversights and were not intentional. They will be corrected.

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## RECOMMENDATIONS

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### LEGISLATIVE

This performance audit identified areas in which the General Assembly may wish to consider statutory changes to improve the efficiency and effectiveness of the Human Rights Commission's operations.

1. The General Assembly may wish to consider amending Section 4-21-302 through 311, *Tennessee Code Annotated*, to require the commission to close employment and housing complaints within a specified number of days, depending on whether the case resulted in a "cause" or "no cause" finding, was being mediated, or was going before an administrative law judge.
2. The General Assembly may wish to consider amending *Tennessee Code Annotated* to require the removal of any commission member who regularly fails to attend commission meetings.

### ADMINISTRATIVE

The Human Rights Commission should address the following areas to improve the efficiency and effectiveness of its operations.

1. Management should continue its efforts to reduce the number of open cases and to better monitor the progress of cases. The commission should continue to find methods to reduce the amount of time to investigate a case. Management should more quickly assign cases to investigators and develop processing time guidelines for each phase of employment and housing complaint casework.
2. Management should insist that these two contract investigators obtain a Tennessee license as either an attorney or private investigator or terminate their contracts effective immediately. Future contracts should state that the contract investigator must be a licensed private investigator or attorney in Tennessee.
3. Management should require annual, dated conflict-of-interest statements, signed and with a printed name in the document or under the signature, from both staff and commissioners.
4. Management must either terminate the interim employees who have exceeded the one-year limit, request new interim appointments, or grant regular appointments in the positions using the certificate of eligibles (the register) from which the interim appointments were made, provided:

- (a) the employees were within the original top five (5) eligibles on an employment certificate or the original top (3) eligibles on a promotional certificate,
  - (b) the rules for contacting eligibles were followed and eligible applicants on the register at the time of the interim appointments were notified that the interim appointments could change to regular appointments at a later time.
5. Management needs to seek guidance from the Department of Personnel to accurately classify the part-time employee as part-time or full-time based on the hours worked during a year. Depending on the classification as determined by the Department of Personnel, the employee should accrue appropriate overtime and benefits.
6. Management needs to establish policies regarding who supervises whom, the number of hours that can be worked a day, excessive working hours, working at home, appropriate “work at home” duties, supervision of “work at home,” and the initialing of handwritten time card entries by a supervisor. Employees should only be allowed to work at home under unusual circumstances. If unusual circumstances occur and an employee is allowed to work at home, this arrangement should be of short duration, with adequate documentation of the work to be completed and actually completed, and approved by the executive director. Any overtime hours worked should be performed in the office.

## **APPENDIX**

### **TITLE VI INFORMATION**

All programs or activities receiving federal financial assistance are prohibited by Title VI of the Civil Rights Act of 1964 from discriminating against participants or clients on the basis of race, color, or national origin. In response to a request from members of the Government Operations Committee, we compiled information concerning federal financial assistance received by the Human Rights Commission, and the commission's efforts to comply with Title VI requirements. The results of the information gathered are summarized below.

The Human Rights Commission receives funds from the federal Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. The commission is not required to file a Title VI report with any state or federal agencies. The commission is required to file an annual Implementation Plan/Update with the Comptroller of the Treasury each year in June. Currently, the commission has contracts with eight persons investigating complaints for the commission. Among these contract investigators, six are Caucasian, and the remaining two are African-American. The commission also has a \$25,000 contract with an African-American public relations firm to create, develop, and implement a media plan that will best educate and promote what the agency does to the general public and key public opinion leaders.

According to the commission, the Title VI Coordinator is Cynthia Howard, who is located in the Nashville office. Her duties are to provide education and outreach, participate in intake and complaint processing, investigate and assist with case closures, prepare the Title VI Implementation Plan, and provide Title VI related training.

To ensure it is meeting Title VI requirements and monitoring activities related to Title VI, the commission states that staff provides a status report on office activities at commission meetings. The office also publishes an annual report chronicling the activities, accomplishments, and statistical data on the complete case inventory. The 904/905/Federal Funds staff track all requests for training.

The commission did not receive any Title VI complaints during the past two years. Should any be received, the commission would investigate them in a fashion similar to that for an employment or housing complaint.

**Staff of the Human Rights Commission by Title, Gender, and Ethnicity**  
**March 2003**

<i>Title</i>	<b>Gender</b>		<b>Ethnicity</b>			
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>	<i>Hispanic</i>	<i>Other</i>
Administrative Support Officers	1	3	1	2	1	0
Assistant General Counsel	0	1	0	0	1	0
Associate General Counsel	0	1	1	0	0	0
Budget Coordinator	1	0	0	1	0	0
Deputy Director	0	1	0	1	0	0
Executive Director	1	0	0	1	0	0
Federal Funds Coord./Office Supervisor	0	1	0	1	0	0
Field Supervisor/Investigator	0	1	1	0	0	0
General Counsel	1	0	1	0	0	0
Information Systems Coordinator	1	0	0	1	0	0
Intake Review Officer	0	1	0	1	0	0
Intake Review Officer/Translator	0	1	0	0	1	0
Investigator	5	5	3	6	0	1
Office Manager/Housing Coordinator	1	0	0	1	0	0
Office Manager/Supervisor	0	1	0	1	0	0
Personnel Coordinator	1	0	0	1	0	0
Secretary	0	2	2	0	0	0
	12	18	9	17	3	1

**Commission Members of the Human Rights Commission**  
**by Gender and Ethnicity**  
**March 2003**

	<b>Gender</b>		<b>Ethnicity</b>			
	<i>Male</i>	<i>Female</i>	<i>White</i>	<i>Black</i>	<i>Hispanic</i>	<i>Other</i>
Commission members	9	6	5	10	0	0